In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1420

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NASH-FINCH COMPANY, D/B/A JACK AND JILL STORES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONER TO RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION

This reply brief is directed to the Company's contention (Br. in Opp. 7–9) that the present suit was properly dismissed for the additional reason that the Board did not comply with the requirements of Sections 10(j) and 10(l) of the National Labor Relations Act, 29 U.S.C. 160(j) and (l), before seeking a federal court injunction. This contention misconceives the nature of the Union's picketing and the effect of the Company's state court injunction.

Section 10(l) of the Act provides that, upon the filing of a charge that a union has engaged in secondary boycott or picketing activity violative of Sections 8(b)(4) or 8(b)(7) of the Act, 29 U.S.C. 158(b)(4),

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(7), the Board's regional director, if he finds reasonable cause to believe that the charge is true, shall file a petition in the federal district court for an injunction against such activity pending a final adjudication by the Board. Section 10(j) provides similar authority in respect to other unfair labor practice conduct. However, neither of these provisions could be invoked here.

The Company did not file charges with the Board claiming that the Union's picketing violated Sections 8(b)(4) or 8(b)(7) of the Act, and, even if it had, the charges would undoubtedly have been dismissed for the picketing, far from violating those Sections, is protected by Section 7 (see Pet. 12, n. 8). Hence, there was no basis for seeking an injunction under Section 10(l) of the Act. Moreover, since the Board has held that an employer's resort to a court to enjoin activity protected by Section 7 does not violate Section 8(a)(1), *Clyde Taylor,* 127 NLRB 103, 109, a charge against the Company for interfering with that activity would lie only if it had resorted to the "unsatisfactory remedy of using 'self help,'" *Int'l Longshoremen's Local 1416* v. *Ariadne Shipping Co.,* 397 U.S. 195, 202 (concurring opinion of Mr. Justice White). Accordingly, there was likewise no basis for obtaining an injunction under Section 10(j). The only effective means of eliminating the interference with activity preempted by the National Labor Relations Act which occurred here was the independent suit which the Board brought to nullify the force of the state court injunction.

For these reasons, as well as those set forth in the petition, the petition should be granted.

Respectfully submitted.

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